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GERMANY

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| In re Application of: | : | |
| BAER, Gerd | : | DECISION ON PETITION |
| U.S. Application No.: 10/566,084 | : | |
| PCT No.: PCT/EP2004/008565 | : | |
| International Filing Date: 30 July 2004 | : | |
| Priority Date: 01 August 2003 | : | |
| Atty Docket No.: 0365 0030US | : | |
| For: ELEVATING PLATFORM SYSTEM | : | |

This decision is issued in response to the "Petition Under 37 CFR 1.181 To Withdraw A Notice Of Abandonment" filed 23 January 2008. No petition fee is required.

BACKGROUND

On 30 July 2004, applicant filed international application PCT/EP2004/008565. The international application claimed a priority date of 01 August 2003, and it designated the United States. On 10 February 2005, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO). The deadline for entry into the U.S. national stage and submission of the basic national fee was thirty months from the priority date, i.e., 01 February 2006.

On 27 January 2006, applicant filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee and a translation of the international application into English.

On 23 May 2006, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 and the surcharge for filing the oath or declaration later than thirty months after the priority date were required.

On 07 December 2007, the DO/EO/US mailed a Notification Of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a timely response to the Notification Of Missing Requirements.

On 23 January 2008, applicant filed the Petition Under 37 CFR 1.181 To Withdraw A Notice Of Abandonment considered herein. The petition asserts that, on 13 July 2006, applicant filed via facsimile a timely response to the Notification Of Missing Requirements that included a fully executed declaration and the authorization to charge applicant the required surcharge.

DISCUSSION

The present petition states that a response to the Notification Of Missing Requirements, including an executed declaration and the authorization to charge Deposit Account No. 50-1030 the required surcharge, was filed by facsimile on 13 July 2006. However, the application file does not contain such responsive materials.

The present petition includes a copy of the seven-page facsimile purportedly filed on 13 July 2006. These materials include the following: (1) a two-page "Transmittal Letter Submitting Missing Requirements" that identifies the present application, itemizes the attached materials (including the executed declaration), authorizes a charge to Deposit Account No. 50-1030 for the required surcharge, and bears a "Certificate Of Transmission" dated 13 July 2006 and executed by Judith Lang; (2) a copy of the Notification Of Missing Requirements (two-pages); and (3) an executed declaration (three-pages). The petition also includes a copy of the confirmation report generated by applicant's facsimile machine with respect to the 13 July 2006 submission, which confirms a seven-page transmission on such date, as well as a declaration in support of the petition from Judith Lang, the person who executed the certificate of transmission contained on the 13 July 2006 submission.

37 CFR 1.8(b) states the following:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

With regard to item (1) above, the present petition was promptly filed.

With regard to item (2) above, the present petition includes a copy of the previously transmitted correspondence which, as noted above, bears a certificate of transmission.

With regard to item (3), as noted above, the present petition includes a copy of the sending unit's report confirming transmission to the USPTO facsimile number of a seven-page submission in the present application on 13 July 2006, as well as a declaration confirming the previous submission executed by Judith Lang, the person who signed the certificate of transmission contained in the materials filed 13 July 2006 (and a person who would therefore be

presumed to have personal knowledge of such transmission). The statements in the petition and Ms. Lang's declaration, in combination with the facsimile confirmation report, satisfy the requirements of item (3) above.

Based on the above, the present petition satisfies the requirements of 37 CFR 1.8(b). Accordingly, the materials accompanying the present petition (including the executed declaration) are appropriately treated, for purposes of timeliness, as having been filed on 13 July 2006 as a timely response to the Notification of Missing Requirements mailed 23 May 2006. It is noted that, for all other purposes, these materials will be treated as having been filed on 23 January 2008, the filing date of the present petition (see 37 CFR 1.8(a)).

The Notification of Abandonment mailed 07 December 2007, based as it was on applicant's purported failure to file a timely response to the Notification Of Missing Requirements mailed 23 May 2006, is appropriately vacated.

CONCLUSION

The petition to withdraw the holding of abandonment is **GRANTED**.

Pursuant to 37 CFR 1.8, for purposes of timeliness, the materials accompanying the present petition, including the executed declaration and surcharge payment authorization, are treated as having been submitted on 13 July 2006 as a timely response to the Notification Of Missing Requirements mailed 23 May 2006.

Deposit Account No. 50-1030 will be charged the \$65 small entity surcharge for filing the declaration later than thirty months after the priority date.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 07 December 2007 is hereby **VACATED**.

This application is being returned to the National Stage Processing Branch of the International Division for further processing in accordance with this decision. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 23 January 2008.



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